Caterair International *and* Chauffeurs, Sales Drivers, Warehousemen & Helpers, Local 572, International Brotherhood of Teamsters, AFL–CIO.[1] Cases 31–CA–18702, 31–CA–18900, 31–CA–18919, 31–CA–18958, and 31–CA–19133

December 15, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The issues presented for Board review in this case[2] are whether the judge correctly found that the Respondent violated Section 8(a)(1) of the Act by efforts to decertify the Union, violated Section 8(a)(5) by refusing to bargain, withdrawing recognition from the Union, and unilaterally granting a wage increase, and violated Section 8(a)(3) by failing to reinstate unfair labor practice strikers. The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[3] and conclusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Caterair International, Los Angeles and Long Beach, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Insert the following as paragraph 2(c) and reletter the subsequent paragraphs.

''(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.''

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] On August 26, 1992, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Salvadore Sanders, Esq., for the General Counsel.
Ivan H. Rich and *Teresa Shannon, Esqs. (Rich, Adams & D'Ambrosia, P.S.C.),* of Louisville, Kentucky, for the Respondent.
Ralph M. Phillips, Esq. (Wohlner, Kaplan, Phillips, Vogel & Young), of Encino, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing in this matter was held before me in Los Angeles, California, on February 4–7 and 25–26, 1992. The charges were filed by Chauffeurs, Sales Drivers, Warehousemen & Helpers, Local 572, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (the Union) on various dates between March 11 and November 13, 1991. Thereafter, the Regional Director for Region 31 of the National Labor Relations Board (the Board) issued various complaints and amended complaints, and the final consolidated complaint was issued on December 20, 1991. The complaint and notice of hearing alleges violations by Caterair International (the Respondent) of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The Respondent's answer to the complaint, duly filed, denies the commission of any unfair labor practices.

The parties were afforded a full opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel and counsel for the Respondent.[1]

On the entire record,[2] and based on my observation of the witnesses and consideration of the General Counsel's brief, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Delaware corporation engaged in the business of catering food for commercial airlines, with its corporate offices located in Potomac, Maryland. It maintains offices and three facilities in Los Angeles, California (the facilities involved). In the course and conduct of its California business operations the Respondent annually purchases and receives goods and services valued in excess of $50,000 directly from suppliers located outside the State of California.

It is admitted, and I find, that the Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted, and I find, that the above-named Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

[1] The Respondent's motion to file brief untimely is hereby denied. The reasons advanced in support of the Respondent's motion, namely, out-of-state litigation in an unrelated proceeding involving work stoppages and numerous unforeseen hearings in both state and Federal court, is insufficient to excuse its failure to timely submit a motion for an extension of time to file briefs in this proceeding.

[2] The General Counsel's unopposed motion to correct the transcript is hereby granted.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principle issues raised by the pleadings are whether the Respondent solicited employees to sign a decertification petition, and whether the extent of the Respondent's involvement with the decertification petition is sufficient to warrant a finding that it violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union; and whether the strike which began on June 3, 1991, was an unfair labor practice strike.

B. *The Facts*

1. Background

In 1989, the Respondent became the successor employer to Marriott InFlite Services, a division of Marriott Corporation. The Respondent currently maintains facilities in the United States and Canada. It employs some 3000 employees in its western region, which includes the Los Angeles facilities involved.

The labor relations and bargaining history between the Union and Marriott is as follows: The Union was certified as the collective-bargaining representative of Marriott's employees on March 18, 1977. Apparently no collective-bargaining agreement was entered into, and following another representation election the Transport Workers' Union was certified as the employees' collective-bargaining representative on November 9, 1979. On April 15, 1983, following another election, the Transport Workers' Union was decertified. The Union was again certified as the employees' collective-bargaining representative on September 4, 1988, and thereafter, on about June 1, 1989, a collective-bargaining agreement containing a union-security clause was negotiated and entered into. An election to withdraw the authority of Marriott and the Union to enter into a union-security agreement (withdrawal of union-shop authority) was held on October 23, 1989, and the employees voted to retain the contractual union-security provision.

The Respondent, during times material, employed 750 employees at its three facilities in the Los Angeles area. On becoming a successor employer to Marriott, it continued to honor the existing collective-bargaining agreement between Marriott and the Union, which agreement was effective by its terms from June 1, 1989, through May 31, 1991,[3] and which covered the employees at the three Los Angeles facilities (the 607 Facility, 308 Facility, and the 380 Facility) in a single bargaining unit.

The bargaining unit specifically includes ''kitchen supervisors.'' The Respondent has 57 managers, and managers are the first line ''supervisors'' within the meaning of Section 2(11) of the Act. During February, when the decertification petition was circulated, infra, were 39 managers and approximately 450 employees at the 607 Facility; 14 managers and approximately 250 to 300 employees at the 308 Facility; and 4 managers and approximately 25 employees at the 380 Facility. The 607 Facility and the 308 Facility are located near the Los Angeles International Airport. The much smaller 380 Facility is located in Long Beach.

[3] All dates or time periods hereinafter are within 1991 unless otherwise specified.

On March 4, employees filed a decertification petition in Case 31–RD–1224, supported by the signatures of 428 of the 750 unit employees, the great majority of whom are Spanish speaking. The petition consists of 45 pages; each page contains from about 1 to 45 signatures. The heading at the top of most pages of the petition states, in both Spanish and English, ''We do not want the Union. We want an election.'' Other pages of the petition contain the heading, in both Spanish and English, ''We the following employees of Caterair Shoppes 607, 308 and 380 do not want the Teamsters Local 572 to represent us anymore.'' It appears from the dates opposite each signature on the petition, that it was circulated during a 1-week period, between February 22 and 27.

On March 15, the Union notified the Respondent of its intent to reopen the collective-bargaining agreement for negotiation. The Respondent replied by letter dated March 20, that it declined to bargain for a new agreement, explaining that it had a good-faith doubt of the Union's majority support as evidenced by the decertification petition signed by a majority of the unit employees.

As noted above, the agreement expired on May 31. The Union commenced a strike against the Respondent on June 3. Of the 750 bargaining unit employees, some 289 employees, or 38 percent of the bargaining unit, participated in the strike.

It is alleged that the strike was an unfair labor practice strike in protest of the Respondent's alleged solicitation of signatures on the decertification petition and other threats and unlawful acts. By letter dated October 31, the Union advised the Respondent that it had elected to end the strike. It made an unconditional offer on behalf of the striking employees to return to work, demanding that the ''temporary replacement workers'' be discharged and the ''regular employees, who were unfair labor practice strikers'' be returned to work immediately. The Respondent replied by letter dated October 4, denying that the strike was an unfair labor practice strike and stating that, ''Your requested procedure for reinstatement of strikers is denied. No current employee will be removed to make room for a striker.'' Moreover, the Respondent advised the Union that it had established a recall list for strikers who were requesting reinstatement, and that the employees would be notified as openings occurred in their former or substantially equivalent jobs.

2. Employee recollection of notices posted by the Respondent

Jose Ordonez has been employed since June 23, 1981. He testified that after May 15 he saw notices posted on the wall at the entrance to the Respondent's cafeteria at Facility 607. The notices were handwritten, and said that the strike was illegal, and that any employee who participated in the strike would be terminated. The notices were posted for approximately 2 weeks.

On cross-examination, it was pointed out that Ordonez' affidavit stated that the notice was ''printed'' and that ''the strike would be illegal and that if the employees went on strike, they had enough replacements, and we would be terminated.'' The notice was not signed. According to Ordonez, there were no notices that said strikers would be arrested.

Jesus Hernandez has been employed since January 30, 1977. On June 2, at Facility 607, he saw General Manager

Jose Ramirez post a typewritten notice on the wall near the ladies' room, next to where the payroll checks are handed out to employees. The notice said, according to the testimony of Hernandez, ''We know that tomorrow all of the employees are going on strike. Every person going on this will be permanently replaced.'' This notice was in both Spanish and English. About a week prior to this occasion, Hernandez saw a notice on the inside of the window of the operation manager's office. All the employees would have to pass the office as they were going to their work areas. The notice said, according to Hernandez, that ''whether the strike was legal or illegal, they could keep employees out of employment in the Company for more than three years by appealing this in court.'' The notice was typewritten in both Spanish and English.

Hernandez testified that there were no threats before the strike that employees would be fired or arrested as a result of going out on strike. He acknowledged that included with his paycheck was a notice stating that ''An employee who walks out as a part of a plan or pattern of 'quickie' 'intermittent' or 'hit and run' strikes may be lawfully fired,'' and that ''An intentional slow down of work is an unprotected activity and anyone who participates in this type of activity will be fired.''

Luz Hernandez has been employed since August 1980. She worked at the 607 Facility. She saw various signs posted at the facility throughout the month of May. Some were handwritten and some were typewritten. Some were in the cafeteria and some were in the hallway. The handwritten signs said that anyone involved in the strike would be arrested by the police because the strike was illegal.[4] The printed signs said that people going on strike would not be paid, and would not be able to collect unemployment, and that they would be replaced. She does not recall any of the printed signs saying that employees would be arrested or fired.

Martha Galvan has been employed since August 2, 1979. She worked at Facility 607. She saw a notice posted near the payroll office on June 2. The notice said that the strike that was to take place the following day was illegal, and everyone who went out on strike would be permanently replaced. The sign was in Spanish. General Manager Paul Norman posted this notice. The notice was handwritten and was not signed. To Galvan, permanently replaced means the same as being fired.

Isidro Barrientos has been employed since April 16, 1981. He worked at Facility 607. He saw several managers post notices. On the day before the strike, General Manager Jose Ramirez posted two notices, one in the cafeteria and one near the restroom which is near the payroll office. The signs, which were in both Spanish and English, and which were handwritten, said that any person who went out on strike would be fired, and would lose all unemployment benefits because the strike was illegal, and any person engaged in a slowdown or trying to obstruct the normal functions of the Company would be considered to be on strike. Signs posted by Production Manager Paul Norman and Human Resources Manager Carmen Nassar, said the same thing.

[4] Hernandez testified that she found similarly worded papers in her locker, although there is no evidence that they were placed there by the Respondent.

Mauricio Perez has been employed since August 16, 1986. On June 2, Perez saw General Manager Jose Ramirez post a paper under the window of the payroll office. The sign, in green crayon, stated that any person participating in the strike would be permanently replaced. Perez saw several signs posted during the month of May stating that anyone who interfered with the work of another employee would be fired. He did not see any signs that stated that anyone who became involved with the strike would be fired.

Perez testified that, in Spanish, permanently replaced is the same as being fired.

Yeshewas T. Kefayelew has been employed since April 14, 1984. In May a typewritten notice was posted near the cafeteria. The notice said that ''if you guys are going to strike you're going to lose your job and your benefits.'' It also said that ''the strike is illegal, or—a lot of stuff . . . but I don't remember the other things.'' It did not say that employees would be fired or arrested if they went out on strike.

Daniel Godoy has been employed since June 24, 1980. He testified that on one sign that he saw General Manager Jose Ramirez post, both the words ''fired'' and ''replaced'' were used. Another sign said that employees would be permanently replaced. Another sign, written by hand, said that employees were going to be ''fired automatically.'' Another sign said that if employees went out on strike and caused trouble they could be arrested. However, Godoy did not see any signs that said employees would be arrested for only going out on strike.

Fulgencio Plascencia has been employed since November 9, 1976. In the latter part of May, she saw a notice posted on the walls of the cafeteria and near the bathroom. The notice said that ''if employees went out on strike it would be illegal,'' and ''automatically we would be terminated and replaced.'' Plascencia's affidavit, however, states that the notice stated that if employees blocked the driveway or the street they would be arrested; and that ''I don't recall if the notice said that the strike will be illegal.''

Miguel Gonzalez has been employed since May 1978. He worked at the 607 Facility. He saw one notice posted during the month of May in the hallway near the cafeteria. It was in Spanish and English, and was in longhand. It stated that the employees should be careful because the strike was illegal and if the employees went on strike they would be fired and replaced.

Nora Williams has been employed since March 1989. She testified that before the strike started she saw General Manager Jose Ramirez posting notices, in Spanish and English, on the wall near the restroom and the cafeteria. Manager Saul Monroy was assisting Ramirez. As Williams approached, Monroy told her that she had better read it because it was for her. He was teasing her about it. The notice, which was handwritten, said that if employees ''walked off and went on strike you were fired.'' However, according to Williams, the notice contained both the words ''fired'' and ''replaced.''

Willie Land has been employed since May 5, 1977. She worked at the 607 Facility. A few days prior to the strike she saw a notice posted in the hallway leading to the cafeteria. It was typewritten. It said that if the employees went out on strike they would be permanently replaced.

Victor Saldana has been employed since May 25, 1990. Prior to the strike he saw several managers posting notices: General Manager Jose Ramirez, Manager Jose Castillo, and Human Resources Director Millie Bisono. The notices were posted throughout the department: in the hallways, the cafeteria, the entrance way, near the timeclock, and on the stairwells; it looked like a museum to him. Most of the notices said the same things. Some were in longhand, some were typewritten. One of them stated that the employees were going on strike and would be permanently replaced, ''which means,'' according to Saldana, ''that we were going to be fired.'' The sign also apparently said that the strike would be illegal. Thus, Saldana interpreted the sign to mean that ''the strike would be illegal, and we were going to get fired.'' Some of the notices, according to Saldana, said ''permanently replaced,'' and some of them said ''fired.'' He interpreted this as a threat. The exact words on the handwritten notices were that, ''any person being part of the strike would be definitely replaced and fired.'' On some notices both words were used.

Daniel Godoy began working for the Respondent on June 24, 1980. He worked at the 607 Facility. He saw General Manager Jose Ramirez putting up a notice on June 2, one day before the strike. He also saw signs in May. One sign said that if the employees went out on strike they would be replaced by 300 or 400 people who had already been hired, and that employees would be fired automatically because the strike was illegal.

Willie Land has been employed since May 5, 1977. She testified that she was never approached by anyone to sign the petition, and saw no signs to the effect that employees would be arrested, or that a strike would be illegal, or that employees would be fired if they went out on strike.

3. Respondent's involvement with the petition; posting and distribution of notices

Millie Bisono is regional human resources director for the western region of the Respondent. Bisono testified that in February, there were approximately 750 employees in the bargaining unit. Although the contract contained union-security and checkoff provisions, only 403 employees were having dues deducted from their paychecks. As the expiration date of the contract approached, various employees asked her how to get rid of the Union. In response to these inquiries the Respondent prepared two different information sheets, and provided these only to employees who inquired about the matter. Bisono provided such material to employees Bonnie Metcalf, Glicerio Cuellar, and Xiomara Menendez.

The information sheets are printed in both Spanish and English. One of the sheets is entitled ''Facts about Union Decertification.'' It explains that employees may request the Board to hold an election to decide whether to remove a union, and that the period for filing such a petition is 90 to 60 days prior to the expiration of the union contract, which, ''in this case begins March 2, 1991.'' It advises employees as to the form and format of the petition. Further, it warns employees that a union will often try to delay a decertification election by filing unfair labor practice charges, and that:

> To keep the union from taking advantage of this delay the petition may be signed by more than 50% of the employees and a copy given to the company. This allows the company to lawfully refuse to negotiate with the union and possibly make wage and benefit changes after the contract expires. If more that 50% of the employees sign the petition it is evidence to the NLRB that a majority really don't want the union.

The notice goes on to state that decertification petitions should not be signed during worktime in work areas, and that it is unlawful for unions to threaten or act against employees because of their decertification activity. Further, the notice states that although it is unlawful for management to actively promote or sponsor the petition, ''However, the company can answer some procedural questions if asked by employees.''

The second information sheet is entitled ''Employee Questions and Suggested Answers on Decertification.'' It is similar, although less detailed, than the aforementioned information sheet.

Human Resources Director Bisono testified that on about May 2, the Respondent posted a notice entitled ''Union Decertification Election,'' in which it advised the employees that the Union had filed a charge against the Respondent ''based on alleged company involvement with the collection of signatures for the decertification petition.'' The notice goes on to say that the Union will attempt to deprive the employees of their right to vote to determine whether or not they want union representation, and will do everything in its power to delay the election; however, the Respondent will make every effort to expedite the process.

On May 16, the Respondent posted a notice entitled ''Expiration of Union Contract,'' in which it advised the employees that after the contract expires the Respondent will continue to serve its customers even if there is outside interference by the Union. Further, if the Union asks the employees to strike, the employees have the right to say no and to continue working, and the Respondent will take whatever action is necessary to protect the safety of its employees at work and continue serving its customers.

Bisono testified that on Sunday, June 2, General Manager Jose Ramirez prepared and posted handwritten copies of a notice at various places in Facility 607. Later that morning, when Bisono arrived at work, she made typewritten copies of the notice and substituted them for the handwritten copies. This notice, which was posted inside the glass window of the payroll office, in the cafeteria, and by the timeclocks, is as follows:

QUESTIONS OF CONCERN

> Q. What happens if we go out for one (1) day or short periods of time, and then we come back to work?
>
> A. An employee who walks out as part of a plan or pattern of ''quickie'' ''intermittent'' or ''hit and run'' strikes may be lawfully fired. Such strikes are unprotected and employees who walk out like that are properly discharged under the law.
>
> Q. What happens to employees who intentionally slow down productivity?
>
> A. An intentional slow down of work is an unprotected activity and anyone who participates in this type of activity will be fired.

Bisono was aware of no handwritten notices stating that employees who went on strike would be fired or arrested, or

that any strike would be illegal. Notices of this description, according to Bisono, were not posted by the Respondent.

Bisono testified that during the course of various company meetings, infra, certain matters were frequently brought up, and the Respondent prepared a question-and-answer sheet, consisting of two pages, which responded to the questions most frequently asked during the employee meetings. This document, in both Spanish and English, was included with each employee's paycheck on May 30, several days prior to the commencement of the anticipated strike. Also, poster-size reproductions of the question and answer sheet were posted in the cafeteria, in the hallway, and by the timeclocks.

The aforementioned document advises employees, inter alia, in a question-and-answer format, that they will be prosecuted and discharged if they engage in serious strike misconduct; that the Union's representations that any strike it calls will automatically be an unfair labor practice strike is erroneous, and that the Respondent is prepared to take this matter to court and this process will take 2 to 3 years; that if the final decision is that the Respondent's actions were lawful, the Respondent could keep the replacement workers, and would not have to discharge them. The following question and answer is also contained in the document:

> Q. Does the Company have to shut down if the union strikes?
>
> A. No. Caterair has an absolute legal right to continue to operate if there is a strike or picket line. If necessary, we will hire new employees to permanently replace those who do not cross the picket line. A replaced striker is not entitled to return to work as long as the replacement wants to continue working whether that's a year, or 10 years or forever. Many strikers have effectively lost their jobs by being permanently replaced.

4. Meetings conducted by the Respondent

Jose Burgos began working for the Respondent on January 22, 1987. He attended a meeting on about May 22 at the Respondent's 607 Facility. About 20 to 25 employees were present. Human Resources Manager Roberto Velazquez conducted the meeting. Velazquez said, according to Burgos, that strikes in California were illegal, that any person who became involved in the strike would be permanently replaced, and that the replaced employees would be on a waiting list until another position was available.

Mauricio Perez began working for the Respondent on August 16, 1986. He worked at the 607 Facility. He attended a company meeting in May. About 45 employees were in attendance. Roberto Velazquez said that he called the meeting to advise the employees that if ''we go on strike, it was going to be an illegal one, and they were going to replace us, and the employees could be arrested.'' Perez asked why the Company didn't give the employees a raise to prevent a strike instead of spending the money to train new people to replace the strikers. Velazquez said that he was interested in his clients, the airlines, and not the employees, and that everyone who became involved in the strike was going to be permanently replaced.

Nora Williams began working for the Respondent in March 1989. She worked at Facility 607. In late May she attended a company meeting. General Manager Jose Ramirez, Human Resources Director Millie Bisono, and Labor Relations Director Roberto Velazquez were present. Velazquez said, according to Williams, that if the employees went on strike for 1 day they would be fired. He told them that they could remain at work if they wanted to, and that there was a place to pick them up if they wanted to come to work. He said that ''he had already planned for the strike and we were already replaced,'' and that he had been interviewing for 2 to 3 weeks. He said something about ''block''(apparently referring to blocking charges filed by the Union in order to prevent an election), and said that if the Union takes it to the labor Board it could take from 2 years to 5 or 10 years to get their jobs back, and that maybe they would never get their jobs back. Williams asked why she didn't get a raise, and Velazquez replied that the Union kept her from getting a raise. Williams then left, and the meeting continued.

Victor Saldana attended two meetings about a week before the strike. General Manager Jose Ramirez and a translator were present. Ramirez spoke in Spanish, and his remarks were translated from Spanish to English. Human Resource Director Millie Bisono was at one of the meetings. Each meeting was attended by between 15 to 20 employees. Ramirez said that the employees had an opportunity to vote to say no to the Union, and asked why the employees should have to pay $15 per month when they ''could have other benefits with those $15?'' Saldana asked him a question regarding salaries, and Ramirez did not answer it. Saldana left the meeting because he was angry.

At the second meeting Ramirez said the strike was illegal. He always said that, according to Saldana. Ramirez said that the employees were going to be replaced, and that there would be problems if strikers blocked deliveries or people who wanted to work.

Millie Bisono testified that in late May, the Respondent held employee meetings at its three locations. The purpose of the meetings was to give the employees information regarding the Respondent's rights and the employees' rights during a strike. The schedule for the meetings was posted and attendance was not mandatory. The meetings lasted from between 15 to 45 minutes, depending on the questions and the discussion. Labor Relations Director Roberto Velazquez conducted about 90 percent of the meetings; Bisono conducted the remainder. The employees were told that they would be permanently replaced if they went on strike, and that the Respondent would continue to service its customers. Employees were not told that they would be fired or terminated or arrested if they went out on strike.

Roberto Velazquez is not currently employed by the Respondent. He was formerly director of labor and employee relations for the Respondent, and was headquartered in Bethesda, Maryland. Velazquez testified that he visited the Respondent's facilities during the last several weeks in May in order to conduct employee meetings and convey the Respondent's position as expressed in the aforementioned posted notices. He conducted between 10 and 15 meetings with the employees. As a result of the various meetings, the Respondent prepared a list of questions and answers, and this list was distributed to each employee prior to the strike.

Velazquez testified that a question commonly asked during the meetings was whether employees would be fired if they went on strike. Velazquez made it a point in Spanish to differentiate between firing an employee for causing harm to the Company and thereby giving the Company a reason for

terminating the employee, and permanently replacing an employee who chose to strike. He gave the employees specific examples, and said, for instance, if employee X would go on strike, then the Respondent would hire employee Y who would continue to work; employee X could not return until employee Y chose to leave the Company. At no time did he say that employees would be fired for engaging in a lawful strike. Nor did he say that a strike would be illegal, or that employees would be arrested in the event of a lawful economic strike.

On cross-examination, Velazquez acknowledged that he told employees that ''anyone who went on strike would automatically be replaced.'' He explained that he told the employees that ''automatically replaced'' meant that the Respondent ''would be looking at replacing them by bringing other people into work.''

5. Alleged solicitation by company managers

Luz Davalos has worked for the Respondent since September 9, 1985. She worked in the accounting department at Facility 607. Davalos testified that on about February 22, Transportation Manager Jose Castillo called her on the phone in her office and asked if she had signed the paper to get rid of the Union. Davalos said she did not know what he was talking about, and Castillo said he would send someone to talk to her.

Davalos testified that she told three other coworkers about this conversation. They told her that they had been solicited by employee Delores Vasquez, another accounting clerk, but they did not sign the petition.

A half-hour after her phone conversation with Castillo, employee Delores Vasquez came to her office. She asked Davalos to sign the paper to get rid of the Union, and stated that the Union was just taking money from the employees, and that Davalos should not be a dummy. Davalos said that she respected Vasquez' position, but that she would not sign the petition. The petition presented to her was a yellow sheet of lined paper with signatures on it. Thereafter, according to Davalos, Vasquez kept ''begging'' her all that day to sign the petition, and said that Davalos was the only one left who had not signed.

About 2 hours later Davalos saw Transportation Manager Castillo in the cafeteria. He walked up to her and, in a whisper, asked whether someone had spoken to her about the matter. Davalos said yes. She thanked Castillo, and said that she was not interested in signing anything. Castillo didn't reply.

The following day, while Davalos was in the cafeteria during her lunch period, she observed that Dishroom Manager Saul Monroy was talking to three or four employees. Monroy had his back to Davalos, but she noticed that he was holding the same type of paper that Vasquez had shown her the day before, and that Monroy was handing the employees a pen. She was unable to identify them, and did not see any employee sign the petition. Later, the same employees came up to her and asked if she knew what the paper meant. They told her that they had refused to sign.

Jose Ordonez has worked for the Respondent since June 23, 1981. He worked at Facility 607. On about May 15, he observed Manager Saul Monroy talking to five or six employees in the dishroom, but he was some 150 feet away and did not know what Monroy was talking to the employees about.

Teresa Reveco began working for the Respondent in August 1983. She worked at the 607 Facility. On February 26, she saw Manager Oscar Peralta talking to Israel Lopez in the cafeteria. Six or seven employees were present. Peralta asked Lopez to sign a paper which he said was a petition to get the Union out. Lopez laughed at him and asked why Peralta believed he would sign to get the Union out as Peralta was well aware that Lopez favored the Union. Peralta smiled and put the paper inside his jacket and left. Reveco did not see Peralta ask other employees to sign.

Israel Lopez has worked for the Respondent since December 20, 1978. He worked at Facility 308. About 100 employees work at this facility. He first became aware of the decertification petition on February 12 when an employee asked him to sign it. He refused. On February 26, Assistant Manager Oscar Peralta approached him in the cafeteria and said he had a petition to get the Union out. He asked Lopez if he wanted to sign it, and said that no one would know because it was secret, and that there would be no problem if he didn't want to sign it. Lopez looked at the petition, and noticed some signatures on it. The paper was white but didn't have any lines on it. He refused to sign, telling Peralta that as a shop steward and a representative of the Union he could not sign the petition.

On the same day, Lopez observed that Assistant Manager Peralta was having a similar conversation with Hector Hernandez. He heard Hernandez tell Peralta to ''go fuck himself, that he was not going to sign any type of paper.'' Peralta laughed.

Lopez testified that he told about 20 employees about the aforementioned incidents; however he was able to identify only about 5 or 6 of these individuals. When relating to them what had occurred, he told each of the 20 employees that Peralta had told him that there would not be a problem if he didn't sign the petition.

Jose Lara began working for the Respondent on June 19, 1980. On about February 22, at the 607 Facility, he observed Manager Saul Monroy talking to various employees. He did not recall their names. Lara testified that Monroy was asking employees to sign a piece of white paper that was on top of a yellow pad of paper. He was not sure how many employees he observed signing the paper ''because I went to pick up what I was going to get and left,'' but he believed that about three employees signed it. He was about 75 feet away from Monroy and the other employees during this occurrence. That morning an employee in his department was circulating a paper to get the Union out. Later that day he saw Monroy talking to about five other employees. He identified three of them, and testified that he saw one of these individuals, whom he identified as Inez, sign the paper. He was about 20 feet away, but was not close enough to see the signatures on the paper or hear what anyone was saying.

Jose Manuel Vasquez began working for the Respondent on May 25, 1989. He worked at Facility 607. Vasquez testified that about the end of February he was asked by Manager Saul Monroy to sign a list. Monroy told him that ''he was taking the signatures so that the Union will stay in.'' Vasquez noticed about 10 to 15 signatures on the list; he just kept on working and did not sign it. Vasquez further testified that ''I don't remember the exact words that he [Monroy]

told me, but I think he was asking me to sign that list.'' Vasquez knew that there was a petition being circulated to get rid of the Union, and believed that Monroy was trying to deceive him. He did not tell any other employees about this incident. However, other employees told Vasquez that Monroy approached them and asked them to sign the paper.

Daniel Godoy testified that it was very clear that management was collecting signatures because ''you could see that some of the employees were on the side of management.'' However, he never saw any members of management circulate the petition. Rather, he saw only employees circulating it.

Rosa Rayas began working in May 1990. She worked in the 607 Facility. On about February 22, Manager Albert Pacheco came up to her while she was working, and asked if she had signed the list to get rid of the Union that was being circulated by her coworkers. Pacheco told her that it was a list to collect signatures to get the Union out ''so that we won't have elections.'' He said that if the Union did win, the Union would charge her for back union dues for 1 year which amounted to more than $200; and that the Union was no good for her because it actually was a Mafia. He told her to sign the petition because many of her coworkers had already signed and they only needed a few more signatures to get the amount of signatures that the Government requires to get the Union out. Rayas asked what would happen to her if she did not sign. Pacheco replied that he had no idea, and that those decisions were going to be made by the people up above.

Carlos Sosa began working for the Respondent in May 1983. He worked at the 607 Facility. On February 21, he had a conversation with Manager Saul Monroy in the dishwashing area. Monroy showed him a list on a clipboard; the list contained about nine signatures. Monroy asked him to sign so that the employees could obtain better salaries, a cheaper health program, and more days paid vacation. Sosa told him to show him something in writing to assure him that he would be getting those benefits, and Monroy told him not to worry about it and just sign the paper. Monroy also told him not to sign unless he wanted to, and did not indicate in any way that Sosa's job would be in jeopardy for not signing. According to Sosa, Monroy made no threats or promises. Sosa refused to sign.

Sosa observed Monroy talking to other employees in the same department. Monroy had the clipboard with him with the list of signatures, but Sosa did not overhear the conversations. Other employees, prior to this time, were also soliciting signatures, and he saw Monroy talking to these people. Sosa did not see any employees sign the petition.

Alfred Mercado began working on July 6, 1990. He worked at the 607 Facility. On February 26 or 27, he was approached by Manager Saul Monroy, who asked him if he would sign a piece of paper. The paper was attached to a clipboard. Monroy didn't say what the paper was for, and Mercado refused to sign. After that he saw Monroy talking to three other employees. While his affidavit states, ''I did not observe Monroy speaking with other employees,'' Mercado said this was a mistake and that he did see Monroy talking to other employees.

Teresa Revco testified that when she went to pick up her paycheck from the accounting department, an accounting clerk, Irena Velo, who is a unit employee, told her that if she would like to get her check she should sign a petition to get the Union out. Velo showed her the petition. Revco refused to sign, and was given her paycheck. Revco testified that there were about 10 employees in line, and she did see other employees sign the paper. No managers were present in the accounting office at this time.

Victor Saldana began working for the Respondent on May 25, 1990. He worked at the 607 Facility. In late February, Manager Saul Monroy showed him a clipboard with a paper attached, and asked him to sign. Saldana was not able to read what was on the paper because it was covered with another sheet of paper, and Monroy asked Saldana if he would sign it to get the Union out. Monroy said it would be good for him to sign, but that he should not sign if he didn't want to. Monroy said, ''Why do you have to pay $15 per month and when they fire you, you're not going to get any help?'' Saldana refused to sign and Monroy said fine. Saldana told six or seven other employees about this conversation.

Myrna Silva began working on May 1, 1990. She worked at the 607 Facility. On February 25, she saw Manager Saul Monroy talking to about 10 employees about signing a paper that Monroy was carrying. About half the page was filled with signatures. She heard Monroy ask employees to sign the paper to get the Union out because the Union was stealing from them and was of no advantage to the people. She did not see any employees sign the petition. Monroy did not approach her.

Silva testified that she wanted to do whatever she could to help the Union. Her affidavit states:

> Approximately on 2/25 of ''91 I saw Saul Monroy, the supervisor of the Dishroom . . . he was carrying a piece of paper that he had on top of a booklet, talking to employees. As he was talking, he was taking notes on that piece of paper. I did not see any employees signing. I can hear Monroy tell the employees that the Union was stealing from us and it was no advantage to us to have it. I saw him talking to the employees of his area, which are approximately 20 employees. I did not talk to Monroy.

Irene Velo is office supervisor at the 308 Facility. She is a unit employee. She is involved with the payroll and distribution of paychecks from the accounting office at that location, and reports to the general manager. She testified that there was no decertification petition in the office near the payroll signup sheet which employees were to sign when they picked up their paychecks; nor did she instruct any payroll clerks to ask employees to sign a decertification petition as they picked up their paychecks. She did not see any managers soliciting employees to sign the petition.

Cecillia Sanchez works at the 607 Facility. Saul Monroy was a manager in the kitchen where she works. Sanchez testified that neither Monroy nor any manager asked her to sign a petition to get rid of the Union. In fact, she never knew about the petition, and her five coworkers never talked to her about it.

Inez Phipps works at the 607 Facility. Phipps testified that Manager Saul Monroy never asked her to sign a decertification petition. Rather, employee Delores Vasquez did ask her to sign. Phipps did not see any managers asking employees to sign the petition.

The testimony of Sonja Montufar was substantially similar to the foregoing testimony of Phipps. Montufar further stated that Monroy usually carried a yellow booklet containing reports and things, and would make notes on this booklet.

Transportation Manager Jose Castillo testified that he did not ask employees to solicit signatures on the petition, and denied that he asked Luz Davalos to sign the petition. While he has occasion to talk to Davalos regarding work-related matters, he knew her to be an outspoken supporter of the Union, and did not ask her to sign the petition. Further, he did not send Delores Vasquez to ask Luz Davalos to sign the petition. Castillo testified that he attended various management meetings, and was told at these meetings that managers were not to become involved in the circulation of the petition.

Albert Pacheco is production manager at the 607 Facility. Pacheco testified that he did not ask any employees to sign the petition. He did not tell Rosa Rayas that management would take reprisals against her if she didn't sign the petition. He did recall that Rayas asked him what would happen if there were not enough signatures on the petition, and he replied that he didn't know about that. Employees did ask for his opinion about the petition, and he told them that if they signed the petition the Union would no longer exist, and if the Union were to go away they would no longer have to pay union dues.

Oscar Peralta is assistant manager in the kitchen. Israel Lopez works under his supervision. Peralta testified that in February he asked Lopez to sign work-related papers when he saw him in the cafeteria. Lopez refused to sign the papers, and Peralta testified that he does not know why he did not reprimand Lopez for refusing to sign. Peralta denied that he carried a copy of the petition or that he asked Lopez or any other employee to sign the petition.

Saul Monroy is manager in the dishwashing or sanitation department. Monroy testified that in the course of his daily work he carries various work-related papers. He does not carry a clipboard; rather, he usually carries a legal pad. As part of his duties, he periodically reviews and updates employees' phone numbers in the event that he must phone them to fill in for absent employees, and he regularly discusses matters with employees who work for him. Monroy testified that he never carried a petition or asked employees to sign a petition. Specifically, he denied asking Victor Saldana, Alfredo Mercado, Carlos Sosa, Jose Vasquez, Cecilia Sanchez, Inez Phipps, or Sonja Montufar to sign the petition. Moreover, he did not hold meetings or speak to groups of sanitation or dishwashing department employees about the petition, and did not ask them to sign. He attended the management meeting where it was explained that managers were not to become involved with the petition. He did not see any other managers asking employees to sign the petition, and did not know until the day of the strike that a strike was imminent.

Employee Ildefonso Rivas works in the sanitation department, also known as the dishroom. Rivas testified that he asked his coworkers to sign the petition. He did this on his own volition, and management did not ask him to circulate the petition or offer any rewards. Rivas testified that neither Manager Saul Monroy nor any other manager asked employees to sign the petition.

The testimony of employees Marina Barraza, Eduardo Cardenas, and Xiomara Manendez is substantially similar to the foregoing testimony of Rivas.

Robert Dominguez began working on May 5, 1990. He worked at the 607 Facility. In March an employee by the name of ''Glacedio'' came up to him and asked him to sign a paper. There was no heading on the paper; it was just a lined sheet with names on it. The work area was noisy, and Dominguez just heard ''Glacedio'' say, ''for the Union.'' Therefore, he believed it was a paper in favor of the Union, and he signed it. Dominguez identified his signature on the petition, and testified that he would not have signed it if he knew that it was a petition for decertification.

Glicerio Cuellar is communications supervisor at the 607 Facility. He is a unit employee. He testified that he solicited employees to sign the decertification petition, and did not tell employees that the purpose of the petition was to keep the Union in. Some time before he commenced circulating the petition, he asked Human Resources Director Bisono about the matter. She was not helpful and said that ''it was not time for us to talk.'' However, apparently on a subsequent occasion, she did give him a paper entitled ''Facts about Union Decertification.''

6. Alleged interrogation and threats

Jerry Hayes has been employed since August 10, 1986. He works at the 607 Facility. A week before the strike he received a flyer from Human Resources Manager Millie Bisono. She told him that he should read it very carefully because if he went out on strike he would be fired. The paper she gave him said that he would be permanently replaced if he went on strike, and did not say the same thing that Bisono told him. Hayes testified that to him ''fired'' means the same as ''permanently replaced,'' as it is a permanent separation from employment.

Daniel Godoy testified that about 2 months before the strike General Manager Jose Ramirez called him to the office and said that he wanted to talk to him very frankly, that he did not want to beat around the bush. He said that he learned that Godoy was talking to some of the people about going on strike, and that Godoy was an agitator with the employees, and was doing illegal things within the Company and could be fired. He said he learned this from other employees. Godoy said that was not the truth, and that, ''You're going to have to be sure of what you're saying to me, because I don't need other people to do my things, and that's what you do.''

Fulgencio Plascencia was hired on November 9, 1976. He worked at Facility 607. On May 31, he had a conversation with Labor Relations Director Roberto Velazquez on the loading dock. Another employee, Castulo Flores, was present during part of the conversation. Velazquez asked Plascencia what he thought the Union was going to do when the contract expired that night at midnight. Plascencia said that if it was necessary the employees would probably go on strike. He asked Velazquez why the Company refused to renew the contract. Velazquez said that they did not want the Union in the Company anymore, and that was why they had to get the Union out any way they could. Plascencia quoted Velazquez as stating that, ''[W]e were going to find out who had more balls, the Company or the Union.''

Velazquez further stated, according to Plascencia, that the Company was ready to wait as long as possible, no matter how long it was; that everyone who went out on strike would be ''automatically fired''; that if employees were going to be walking around in front of the entrances and exits of the parking lot they were going to be arrested by the police; that the Company was prepared for any type of a strike, and he was positive that they were going to be able to throw the Union out; and that although it didn't cost anything to give them the benefits they wanted, the Company was not going to give the employees anything and was not going to sign the contract.

Plascencia acknowledged that he is known in the shop to be a strong union supporter. His affidavit does not contain the statement that Velazquez said the Company would get the Union out any way it could. Plascencia further testified that Velazquez did say that the employees would be both ''terminated and replaced.''

Castulo Flores began working for the Respondent on April 2, 1979. He worked at Facility 607. Flores testified that he overheard part of the aforementioned conversation between Plascencia and Velazquez on May 31. Velazquez, according to Flores, said that if the Union was going to strike, they would see who had more balls, the Company or the Union; that the Company was prepared for this strike or any other strike, and had extra money, not only for this strike, but for more; that he was not ready to negotiate with the Union now or ever; that he wanted the Union out; and that he was thinking about never negotiating with the Union.

Flores' affidavit states that he did not overhear Velazquez make any comment about the Company not wanting the Union, or about kicking the Union out.

Two or three days before the strike, Roberto Velazquez and, apparently, some other manager were talking to Flores and another employee in the cafeteria. They asked what the employees thought about the strike, and the employees replied that they were not thinking anything about it. Velazquez said that if the employees went on strike they were going to be ''completely fired'' from the Company; that ''we were already replaced by someone else''; that ''there was no law in our favor—or there was no law to protect us whatsoever . . . to think about it, to stay inside the Company and not go on a strike because otherwise we were going to be fired from the Company.'' Velazquez also made reference to another labor dispute involving replaced strikers.

Willie Land testified that on June 3, Manager Jose Castillo asked her if she was going to join the strike. The conversation occurred as Land, who had worked for only 2 hours that day, was then preparing to leave the premises. She said yes. Castillo said that if she left the premises she would no longer have a job. Land mentioned this conversation to perhaps three other employees, including Nora Williams. It was stipulated that Nora Williams would so testify that Land related the conversation to her.

Transportation Manager Jose Castillo testified that in the early morning of the day of the strike he was assigned to watch Marcos Godoy because the Respondent suspected, from the reports of other employees, that he might engage in sabotage. He followed Godoy around, and at 4 a.m. Godoy told employees that it was time to leave and, apparently, to begin the strike. Castillo followed Godoy and other employees outside of the building, and, on returning, he had a conversation with another group of employees. He told them that if they were going to leave work to join the strike, the Company would have the right to replace them permanently. He said nothing to any other employees about the strike, and does not recollect any conversation with Willie Land. Castillo testified that from time to time managers may ask employees to sign work-related papers.

Labor Relations Director Roberto Velazquez recalled having several discussions with Fulgencio Placencia in the cafeteria. He did not tell Placencia that the Company would have to get rid of the Union any way it could, but did tell him that the Company would have to continue catering the airlines any way it could. He also said that the decertification petition meant that a majority of the employees did not want the Union, and therefore the Company felt it was not obligated to negotiate with the Union. He did not say that the Company did not want to give the employees anything.

Human Resources Director Bisono testified that on June 2, she happened to encounter employee Jerry Hayes on the stairs. She told him that there was an impending strike, and she gave him a copy of the aforementioned notice which she happened to have with her at the time. She did not tell him that he would be fired if he went out on strike.

Bisono testified that when the strike began the strikers obstructed individuals who were attempting to enter and leave the premises. On June 4, the day after the strike began, the Respondent obtained a restraining order from the Superior Court for Los Angeles County, setting parameters regarding the picketing and related strike activity.

7. Union meetings regarding the strike vote

Jose Ordonez attended a union meeting on May 22. Business Agent and Organizer David Luna conducted the meeting. About 50 employees were present. Luna asked if the employees wanted to go on strike, and handed them a ballot. The strike was called, according to Ordonez, because the Company refused to negotiate the contract.

Isidro Barrientos attended a union meeting regarding the strike. A show of hands was taken to see whether the employees wanted to go on strike. This was not the May 22 meeting during which the strike vote was taken. It was stated by a union representative that the Respondent was refusing to negotiate with the Union.

Daniel Godoy attended the strike vote meeting on May 22. He voted by ballot. He testified that there were various reasons for going on strike: the Company did not respect the employees' rights and wanted to get the Union out; the Company was collecting signatures from some of the people by deceiving them and telling them that the petition was in support of the Union; and also because, when the contract expired, the Company refused to negotiate.

Godoy's affidavit states that the strike was called because the Company was refusing to sign a contract and give the employees any benefits.

Miguel Gonzalez attended the union meeting on May 22 when the strike vote was taken. He testified that the employees went on strike because the Company refused to negotiate a new contract.

Willie Land testified that the strike was in protest of the Respondent's refusal to renew the contract.

8. Failure to reinstate striking employees; wage adjustments

Vincente Carrillo began working for the Respondent in 1976. He worked at Facility 308. In November, following the Union's October 3 offer to return to work on behalf of the striking employees, he was picketing outside the 308 Facility and saw new employees entering the building. Between November 12 and 17, he observed five new employees. He was able to obtain the names of three of them, namely, Eduardo Avilar, Maria Quadalupe, and Adriana Fierro.

Human Resources Director Millie Bisono testified that the policy at Facility 308 was to hire employees from employment agencies as temporary labor for entry-level positions to fill in for absent employees or employees on vacation. The Respondent continued this process at Facility 308 after October 3, the date of the Union's offer, on behalf of the striking employees, to return to work. The Respondent discontinued using such temporary agencies on or about the first week in December, after receiving a charge alleging that such conduct was unlawful. No temporary employees were used subsequent to October 3, in Facility 607 or Facility 380.

Bisono further testified that after October 3, the Respondent hired only one permanent replacement, a mechanic at Facility 308, after offering the job to qualified employees on the recall list. There were no other permanent replacements hired at any of the three facilities.

Bisono testified that following the expiration of the collective-bargaining agreement on May 31, it initiated a 3-month ''wage pause,'' and then, effective August 31, granted employees a salary increase of from 4 to 6 percent.

C. *Analysis and Conclusions*

The evidence presented by the General Counsel regarding the content of the various notices posted by the Respondent is confused and inconsistent, and the employees' understanding and comprehension of such notices appears to be suspect. Further, the fact that both similar and additional information was imparted to the employees during the course of various meetings and through other notices and information sheets, that the employees were placed in the position of having to comprehend the nuances of unfamiliar concepts, and that language translation difficulties may account for some of the confusion, compounds the difficulty of ascertaining just what information the notices conveyed. Finally, the record shows that the Union has many stewards and supporters who read the posted notices and testified to their content, and it appears that it would not have been difficult for union stewards or other employees to copy the wording of the notices verbatim in order to preclude any difficulties with comprehension or interpretation.[5] Accordingly, I conclude that the record evidence is insufficient to show that the information imparted by the notices is violative of Section 8(a)(1) of the Act, as alleged.

In addition, I find that the employees' comprehension of verbal statements by the Respondent's representatives during the employee meetings is, for many of the foregoing reasons, similarly unreliable. Such testimony appears to be a composite of what the employees actually were told, what they understood, and what they interpolated both from what they were told and from the language of the notices which they had read. Moreover, there were many meetings, and there was no corroboration of any employee's testimony regarding what transpired at any particular meeting. As such, I am unable to conclude that the credible and reliable evidence establishes that the Respondent's verbal statements were violative of Section 8(a)(1) of the Act, except to the extent specifically discussed below.

I find that various managers engaged in solicitation of the deauthorization petition. I credit the testimony of Luz Davalos and find that Transportation Manager Jose Castillo called her on the phone in her office, asked her if she had signed the petition, said that he would send someone to talk to her, and that shortly thereafter an employee presented her with a petition for her signature. Further, Castillo followed up his initial inquiry by asking Davalos whether someone had spoken to her about the matter.

Regarding the solicitation of the decertification petition by Sanitation Manager Saul Monroy, I credit the testimony of Jose Manuel Vasquez, who testified that Monroy asked him to sign a list ''so that the Union will stay in.'' I find, however, that Vasquez misunderstood Monroy regarding the purpose of the list, and that, in fact, Monroy was requesting that he sign the decertification petition.

I credit Carlos Sosa, who testified that Monroy approached him in the dishwashing area with a list containing about nine signatures, and asked him to sign it so that employees could obtain better salaries, a cheaper health program, and more days' paid vacation; and that Sosa observed him talking to other employees in the same department about the petition.

I also credit Vicor Saldana and Alfred Mercado, both of whom testified that they were approached by Monroy to sign the petition, and that Mercado also saw Monroy approach other employees.

I further credit the testimony of the following employees: Myrna Silva, who testified that she saw Monroy talking to about 10 employees, and overheard him asking the employees to sign the paper to get the Union out; Luz Davalos, who testified that she saw Monroy talking to 3 or 4 employees in the cafeteria, that Monroy was holding a copy of the petition, and that he offered the employees a pen; and Jose Lara, who testified that he observed Monroy soliciting other employees, apparently in the dishwashing area.

Regarding the solicitation of the petition by Assistant Manager Oscar Peralta, I credit the testimony of Israel Lopez, who testified that Peralta approached him in the cafeteria and asked him if he would sign the petition; and that Peralta approached Hector Hernandez for the same purpose. Similarly, I credit the testimony of Teresa Reveco, who observed Peralta asking Israel Lopez and other employees to sign a petition to get the Union out.

I credit the testimony of Rosa Rayas who testified that Manager Albert Pacheco asked her to sign the petition. Further, I find that Pacheco told her that if the Union was not decertified she would be liable for back dues in the amount of more than $200. It is also significant that Pacheco told her that only a few more signatures were needed in order to get the Union out.

[5] I am mindful of the fact that an employee who took down one of the notices was discharged or threatened with discharge. However, the fact that the Respondent did not want its notices removed would not appear to inhibit a representative of the Union, such as a steward, from copying or photographing the notice language.

I do not credit the denials of Managers Castillo, Monroy, Peralta, and Pacheco that they did not engage in solicitation of the petition. I find that by such conduct in circulating and requesting employees to sign the decertification petition, the Respondent has violated Section 8(a)(1) of the Act, as alleged. *American Linen Supply Co*., 297 NLRB 137 (1989), enfd. 945 F.2d 1428 (8th Cir. 1991); *Maxi City Deli*, 282 NLRB 742, 745 (1987); *Good N' Fresh Foods*, 287 NLRB 1231, 1236 (1988); *RAI Research Corp*., 257 NLRB 918, 928 (1981); *Hearst Corp*., 281 NLRB 764 (1986).

Having found that during the course of the unlawful solicitation Sanitation Manager Monroy told Carlos Sosa that employees could obtain better salaries, a cheaper health program, and more days paid vacation if they got rid of the Union, and Manager Albert Pacheco told Rosa Reyas that if the Union prevailed Reyas would have to pay more than $200 in back dues to the Union, I conclude that such statements were also unlawful. Monroy's statements to Sosa constitutes a promise of economic benefit in order to induce employees to sign the petition, and are violative of Section 8(a)(1) of the Act. See *Dentech Corp*., 294 NLRB 924, 937 (1989); *Weather Shield Mfg*., 292 NLRB 1, 2 (1988), revd. on other grounds 890 F.2d 52 (7th Cir. 1989). Similarly, I find that, under the circumstances, Pecheco's statement to Reyas constitutes an unlawful threat of economic detriment, as there is no evidence that Pacheco's statement was premised on his genuine opinion or belief that Rayas would be required to pay back dues to the Union.

I credit Daniel Godoy and find that General Manager Jose Ramirez summoned him to the office and told him that he had learned from other employees that Godoy was talking to some of the people about going on strike, that Godoy was an agitator and was doing illegal things, and that he could be fired. Jose Ramirez was not called as a witness by Respondent. I find that Ramirez' statement to Godoy constitutes a threat of discharge for engaging in union activity, and that it is violative of Section 8(a)(1) of the Act. See *Howard & Roberta Feldman Corp*., 265 NLRB 1579, 1580 (1983); *Sarah Neuman Nursing Home*, 270 NLRB 663, 679 (1984); *Bay Area-Los Angeles Express*, 275 NLRB 1063, 1080–1081 (1985).

I credit the testimony of Fulgencio Plascencia, and find that Labor Relations Director Roberto Velazquez told him that the Respondent did not want the Union in the Company and intended to get the Union out any way it could. Such a statement, viewed in light of the Respondent's unlawful circulation of the decertification petition, may be reasonably understood as an unqualified declaration of the Respondent's intent to use unlawful means, if necessary, to rid itself of the Union. As such, it is violative of Section 8(a)(1) of the Act. See *Cannon Industries*, 291 NLRB 632, 637 (1988).

Further, I find that Velazquez did tell Plascencia that everyone who went out on strike would be ''automatically fired.'' Thus, Velazquez admitted that he told employees during the various employee meetings that they would be ''automatically replaced,'' and followed up this remark by explaining what he meant. There is no credible evidence, however, that during his one-on-one conversation with Plascencia he proffered such a qualifying explanation. Whether Velazquez used the work ''replaced'' or ''fired'' is immaterial under the circumstances, as the remark, reasonably understood, clearly conveyed the idea that employees could immediately consider themselves to be fired or their positions to have been filled the instant they joined the strike. In this regard, the evidence shows that the Respondent did not hire employees as replacements prior to the commencement of the strike.

Similarly, I credit the testimony of Castulo Flores, and find that Velazquez told Flores and another employee that if the employees went on strike they would be ''completely fired,'' and that they had already been replaced.

Velazquez' foregoing statements, under the circumstances, are tantamount to a threat to discharge employees for engaging in the act of striking, and are violative of Section 8(a)(1) of the Act. *American Linen Supply Co*., supra; *Mars Sales & Equipment Co*., 242 NLRB 1097, 1101, 1102 (1979), enfd. in pertinent part 626 F.2d 567, 572–573 (7th Cir. 1980).

I further credit employee Willie Land and find that Transportation Manager Jose Castillo told her that if she left the premises to go on strike she would no longer have a job. In addition, I credit employee Jerry Hayes and find that Human Resources Manager Millie Bisono told him that if he went out on strike he would be fired. Such statements also are similarly violative of the Act.

As set forth above, I have found that four managers of the Respondent unlawfully solicited employees to sign the decertification petition. The Respondent maintains that even if it should be found that its managers did so, their interference with the circulation of the petition was insignificant when viewed in context, and was insufficient to taint the petition: only a relatively small number of managers were allegedly involved in this activity; there is no showing that any of the employees solicited by management did, in fact, sign the petition; the employees who claim they were approached were not at all intimidated or otherwise coerced into signing; and all of the Respondent's employees were quite familiar with the election and petition process, having been involved in many prior Board elections within the past several years. Thus, the Respondent argues that it should not be precluded from relying upon the petition to support its decision to withdraw recognition from the Union.

The Respondent's counsel, during closing argument at the hearing, cited two cases in support of the Respondent's position. In *Guerdon Industries*, 218 NLRB 658 (1975), and *Burger Pits, Inc*., 273 NLRB 1001 (1984), enfd. 785 F.2d 797 (9th Cir. 1986), the Board stated that certain unfair labor practices committed prior to the withdrawal of recognition may not be ''of such a character as to either affect the Union's status, cause employee disaffection, or improperly affect the bargaining relationship itself,'' and that in such circumstances the withdrawal of recognition would not be deemed to be unlawful.

Similarly, the Board has enunciated in *Chicago Magnesium Castings*, 256 NLRB 668, 674 (1981), that to warrant the finding of an unlawful withdrawal of recognition, the underlying unfair labor practices must be ''sufficiently serious . . . that they possessed an inherent tendency to . . . [contribute] to the union's loss of majority status.'' See also *BSAF Wyandotte Corp*., 276 NLRB 1576, 1577 (1985).

Contrary to the Respondent's position, I find that that its interference with the circulation of the petition was widespread and was not isolated or numerically insignificant in relation to the total number of unit employees. Thus, four

different managers approached numerous employees and solicited their signatures in work areas and in the cafeteria, and in the presence of other employees who were in a position to observe what was occurring. Moreover, the employees who were approached related this fact to their coworkers. Although the petition was signed by 428 employees out of a unit of 750 employees, and while this constitutes a clear majority of the unit, it is a majority of only 53 employees or about 7 percent of the unit complement. Further, as the Respondent points out, although each of the employees who testified in this proceeding declined to sign the petition proffered by the managers, nevertheless the credible testimony of various employees shows that some of the petition sheets circulated by the managers did contain employee signatures; and it is reasonable to assume that employees who were confronted with such a petition by Respondent's managers would feel constrained to sign it.

Clearly, within the purview of the above-cited cases, the Respondent's foregoing widespread and conspicuous unfair labor practices in directly soliciting employees to sign the petition, with several instances of accompanying threats or promises, constitutes unlawful conduct of such a character as to cause employee disaffection, and has an inherent tendency to contribute to the Union's loss of majority status. Solicitation under such circumstances interferes with employee freedom of choice, as the signatures obtained on the petition may not necessarily reflect the true desires of the employees and may therefore not be relied on by the Respondent as a basis for withdrawing recognition. Thus, it may be presumed that employees who signed the petition on the solicitation of other unit employees were aware of the Respondent's efforts in this regard, and such knowledge is likely to have influenced their decision. See *Hearst Corp*., supra; *Choctawhatchee Electric Cooperative*, 274 NLRB 595 (1985). Accordingly, I find that by relying on the tainted decertification petition as the basis of its withdrawing recognition from the Union, the Respondent has violated and is violating Section 8(a)(5) of the Act. *American Linen Supply Co*., supra; *Texaco, Inc*., 264 NLRB 1132 (1982), enfd. 722 F.2d 1226 (5th Cir. 1984), and cases cited therein; *Hearst Corp*., supra.

Having found that the Respondent's withdrawal of recognition was unlawful, I further find that its subsequent unilateral implementation of a wage increase in September, without bargaining with the Union, was also violative of Section 8(a)(5) of the Act.

The strike which commenced on June 2, was, in large part, in protest of the Respondent's March 20 letter expressing a good-faith doubt of the Union's majority status, and refusal to bargain for a new agreement. As the decertification petition on which the Respondent relied in support of its refusal to bargain had been tainted by the Respondent's unfair labor practices, it is clear that the ensuing strike was an unfair labor practice strike and the strikers were unfair labor practice strikers. See *C-Line Express*, 292 NLRB 638 (1989); *American Linen Supply Co*., supra at 138 fn. 4. Accordingly, the Respondent was required to immediately reinstate such strikers, on request, to their former or substantially equivalent positions of employment. *Reichold Chemicals*, 301 NLRB 1203 (1992); *PRC Recording Co*., 280 NLRB 615 (1986).

By letter dated October 3, the Union advised the Respondent that the strike was ended and that the employees were unconditionally offering to return to work on that date. In reply, the Respondent advised the Union, on October 4, that it was not true that the strike was an unfair labor practice strike and, moreover, that ''No current employee will be removed to make room for a striker.'' Admittedly, the Respondent failed to reinstate some strikers at its 308 Facility, and hired temporary replacements from an employment agency after October 3. While Human Resources Director Bisono testified that no other replacements were hired at the Respondent's other facilities, nevertheless it did not so advise the Union, and its October 4 letter indicates that it was simply unwilling to remove replacement workers in order to make room for strikers. By failing to properly reinstate strikers at its 308 Facility, the Respondent has violated Section 8(a)(3) of the Act. Moreover, if it should later be determined in the compliance stage of this proceeding that the Respondent has failed to properly reinstate other strikers at any of its facilities, such conduct is similarly violative of Section 8(a)(3) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) of the Act by circulating a petition among its employees to decertify the Union as the collective-bargaining representative of its employees in an appropriate unit, by promising economic benefits and threatening economic harm, and by telling employees that they were discharged or automatically replaced if they went on strike.

4. The Respondent has violated Section 8(a)(3) of the Act by failing and refusing, on the request of the Union, to reinstate unfair labor practice strikers to their former or substantially similar positions of employment.

5. The Respondent has violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union and by refusing to bargain with the Union regarding the terms and conditions of a successor collective-bargaining agreement, and by unilaterally granting a wage increase without bargaining with the Union.

THE REMEDY

Having found that the Respondent has violated Section 8(a)(1), (3), and (5) of the Act, I recommend that it be required to cease and desist therefrom and from in any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Further, the Respondent shall be required to offer the unfair labor practice strikers reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, discharging, if necessary, any replacements, together with backpay from October 3, 1991, the date of the Union's request, on behalf of the striking employees, to return to work. Backpay shall be computed on a quarterly basis as described in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest thereon to be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Moreover, the Respondent shall be required to recognize and bargain with the Union, on request, and to post an appropriate notice, attached hereto as ''Appendix.''

It is recommended that the decertification petition in Case 31–RD–1224 be dismissed by the Regional Director for Region 31.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, Caterair International, Los Angeles and Long Beach, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Circulating petitions among its employees to decertify the Union.

(b) Promising employees economic benefits if the Union is decertified.

(c) Threatening employees with economic harm if they fail to decertify the Union.

(d) Threatening employees with discharge or automatic replacement if they support the Union or elect to go on strike.

(e) Utilizing a decertification petition circulated by the Respondent as a basis for refusing to bargain with the Union as the collective-bargaining representative of its employees.

(f) Failing and refusing to bargain with the Union as the collective-bargaining representative of its employees.

(g) Failing and refusing to reinstate unfair labor practice strikers on their request to return to work.

(h) Unilaterally granting a wage increase without bargaining with the Union.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain, on request, with the Union as the collective-bargaining representative of its employees in the following unit:

> INCLUDED: All food and equipment handlers and helpers, chefs, dispatcher, coordinators, executive chefs, lead cooks, cooks, assistant cooks, lead bakers, bakers, lead station attendant, station attendant, kitchen supervisors, liquor room, lead sanitation, sanitation-utility, lead storekeeper, storekeepers, plant clerical, clerk dispatchers, maintenance, clerk, flight assemblers, auto maintenance, and bank attendants employed by the Employer at Shop 607, 6901 West Imperial Highway, Los Angeles, California; Shop 308, 7255 World Way West, Los Angeles, California; and Shop 380, 3250 E. 29th Street, Long Beach, California.
>
> EXCLUDED: Office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) On request, reinstate unfair labor practice strikers and pay them backpay, with interest, in the manner proscribed in the remedy section of this decision.

(c) Post at the Respondent's Los Angeles and Long Beach, California facilities copies of the attached notice marked ''Appendix.''[7] Copies of the notice, in Spanish and English, on forms provided by the Regional Director for Region 31, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and maintained by the Respondent for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT circulate petitions among our employees to decertify the Union as the collective-bargaining representative of the employees.

WE WILL NOT promise employees economic benefits if they decertify the Union as their collective-bargaining representative.

WE WILL NOT threaten employees with economic harm if they fail to decertify the Union, or with discharge or automatic replacement if they elect to engage in union activity or in a strike against the Company.

WE WILL NOT refuse to reinstate unfair labor practice strikers to their former or substantially equivalent positions of employment.

WE WILL NOT unilaterally increase wages without bargaining with the Union.

WE WILL NOT refuse to bargain in good faith with Chauffeurs, Sales Drivers, Warehousemen & Helpers, Local 572, International Brotherhood of Teamsters, Chauffeurs, Ware-

housemen and Helpers of America, AFL–CIO as the exclusive representative of the employees in the following unit:

> INCLUDED: All food and equipment handlers and helpers, chefs, dispatchers, coordinators, executive chefs, lead cooks, cooks, assistant cooks, lead bakers, bakers, lead station attendant, station attendant, kitchen supervisors liquor room, lead sanitation, sanitation-utility, lead storekeeper, storekeepers, plant clerical, clerk dispatchers, maintenance, clerk, flight assemblers, auto maintenance, and bank attendants employed by the Employer at Shop 607, 6901 West Imperial Highway, Los Angeles, California; Shop 308, 7255 World Way West, Los Angeles, California; and Shop 380, 3250 E. 29th Street, Long Beach, California.
>
> EXCLUDED: Office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL, on request, bargain collectively with Chauffeurs, Sales Drivers, Warehousemen & Helpers, Local 572, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO as the exclusive representative of all employees in the appropriate unit described above with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL, on request, reinstate unfair labor practice strikers to their former or substantially equivalent positions of employment, discharging, if necessary, any replacements, and pay them backpay, with interest, for the wages they have lost as a result of our failure to timely reinstate them after October 3, 1991.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

CATERAIR INTERNATIONAL